



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2003

Ms. Patricia E. Carls  
Brown & Carls, L.L.P.  
106 East 6<sup>th</sup> Street, Suite 550  
Austin, Texas 78701

OR2003-9064

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192926.

The Georgetown Fire Department (the "department"), which you represent, received a request for "all files against" the requestor and, specifically, the names of people who have filed certain complaints against the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law informer's privilege, incorporated into the Public Information Act (the "Act") by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)).

The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

In this case, you have not indicated which laws are alleged to have been violated, and you have not demonstrated that the alleged violations would result in a civil or criminal penalty. Thus, we find that the city has not adequately demonstrated that the informer's privilege is applicable in this instance. *See, e.g.*, Open Records Decision Nos. 542 (1990) (concluding that Public Information Act places on a governmental body the burden of establishing why and how an exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Consequently, the department may not withhold any portion of the submitted information pursuant to section 552.101 in conjunction with the informer's privilege.

You state that Open Records Letter No. 2000-4866 (2000) "requires the City to withhold the 'names, addresses and phone numbers' of individuals who report violations of the City's Code Enforcement Division under the informer's privilege in conjunction with section 552.101." However, the informer's privilege protects the governmental body's interests and, therefore, may be waived by the governmental body. In Open Letters Ruling 2003-4866, the city asserted and demonstrated that the informer's privilege applied to the information. Thus, this office concluded that the city may withhold the information. We did not require the city to withhold the information. Therefore, the city is free to release the information if it so chooses.

We note that the submitted documents contain Texas motor vehicle information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. However, the requestor has a right of access to his own motor vehicle information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, the department must release this information to the requestor. As the department claims no other exceptions, the remaining submitted information must also be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amy Peterson". The signature is written in black ink and includes a long, sweeping horizontal stroke at the end.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 192926

Enc. Submitted documents

c: Mr. Robert McCranie  
2007 East 19<sup>th</sup> Street  
Georgetown, Texas 78626  
(w/o enclosures)